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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

File: [redacted] Office: COLUMBUS, OHIO Date: JAN 03 2002

IN RE: Applicant: [redacted]

Application: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act, 8 U.S.C. 1182(h)

IN BEHALF OF APPLICANT:

[redacted]

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

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DISCUSSION: The waiver application was denied by the District Director, Columbus, Ohio, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native of Kuwait and citizen of Jordan who was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant is married to a citizen of the United States and has two United States citizen children. He seeks a waiver of inadmissibility as provided under section 212(h) of the Act, 8 U.S.C. 1182(h), in order to remain in the United States and adjust his status to that of a lawful permanent resident.

The district director concluded that the applicant did not warrant a favorable exercise of discretion to grant his request and denied the application accordingly.

On appeal, counsel asserts that the applicant's family would suffer extreme emotional and financial hardship if the applicant were removed from the United States and that the Service failed to properly exercise its discretion in denying the applicant's waiver request.

On appeal, counsel requests oral argument. Counsel states that the issues raised by the appeal are novel and that to determine the standards by which an application for a section 212(h) waiver are to be considered following the enactment of IIRIRA, together with the examination by Congress and the Service of appropriate standards of discretionary action on behalf of foreign nationals who have been convicted of criminal offenses, require the kind of exploration that can only be completed during oral argument.

Oral argument is limited to cases where cause is shown. 8 C.F.R. 103.3(b). Counsel has not established that this case involves unique facts or issues of law which cannot be adequately addressed in writing, therefore the request for oral argument is denied.

The record reflects that the applicant was initially admitted to the United States as an F-1 nonimmigrant student in 1982. As of the fall semester in 1984, the applicant was no longer attending school and was out of status as a non-immigrant student.

On August 8, 1984, the applicant was indicted in the State of Ohio, Cayahoga County, by a Grand Jury for securities fraud and theft in a 106-count indictment. On August 16, 1984, the applicant was married to his United States citizen spouse.

On June 6, 1995, the applicant pled guilty to counts 10, 11, 28, 29, and 92 of the indictment. He was sentenced to six months incarceration for count 28, with five years probation after incarceration was served; and one and one-half years incarceration

on the remaining counts with time suspended. The applicant was also ordered to pay $25,000.00 restitution at a minimum of $5,000.00 per year and not to sell securities or apply for a broker's license.

Section 212(a) of the Act states:

> CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.- Except as otherwise provided in this Act, aliens who are ineligible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:
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> * * *
>
> (2) CRIMINAL AND RELATED GROUNDS.-
>
> (A) CONVICTION OF CERTAIN CRIMES.-
>
> (i) IN GENERAL.- Except as provided in clause (ii), an alien convicted of, or who admits having committed, or who admits committing such acts which constitute the essential elements of-
>
> (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, is inadmissible.

Section 212(h) of the Act states:

> The Attorney General may, in his discretion, waive application of subparagraphs (A)(i)(I). . . and subparagraph (II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if-
>
> (1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that-
>
> (i)...the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
>
> (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
>
> (iii) the alien has been rehabilitated; or
>
> (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent

residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien; and

(2) the Attorney General, in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

No waiver shall be provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder or criminal acts involving torture, or an attempt or conspiracy to commit murder or a criminal act involving torture. No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.

Here, fewer than 15 years have elapsed since the applicant committed a crime involving moral turpitude. Therefore, he is ineligible for the waiver provided by section 212(h)(1)(A) of the Act.

Section 212(h)(1)(B) of the Act provides that a waiver resulting from inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. The key term in the provision is "extreme." Therefore, only in cases of great actual or prospective injury to the qualifying relative(s) will the bar be removed. Common results of the bar, such as separation or financial difficulties, in themselves, are insufficient to warrant approval of an application unless combined with much more extreme impacts. Matter of Ngai, 19 I&N Dec. 245 (Comm. 1984). "Extreme hardship" to an alien himself cannot be considered in determining eligibility for a section 212(h) waiver of inadmissibility. Matter of Shaughnessy, 12 I&N Dec. 810 (BIA 1968).

Nothing could be clearer than Congress' desire in recent years to limit, rather than extend, the relief available to aliens who have committed crimes. Congress has almost unfettered power to decide which aliens may come to and remain in this country. This power has been recognized repeatedly by the Supreme Court. See Fiallo v.

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Bell, 430 U.S. 787 (1977); Reno v. Flores, 507 U.S. 292 (1993); Kleindienst v. Mandel, 408 U.S. 753, 766 (1972). See also Matter of Yeung, 21 I&N Dec. 610, 612 (BIA 1997).

It should also be noted that Matter of Goldeshtein, 20 I&N Dec. 382 (BIA 1991), rev'd on other grounds, 8 F.3d 645 (9th Cir. 1993), held that an application for discretionary relief, including a waiver of inadmissibility under section 212(h) of the Act, may be denied in the exercise of discretion without express rulings on the question of statutory eligibility. In that matter, the immigration judge found that there may be extreme hardship in that particular case but denied the waiver request as a matter of discretion because the applicant's offense was "very serious." See INS v.Rio-Pineda, 471 U.S. 444, 449 (1985); INS v. Bagamasbad, 429 U.S. 24, 25 (1976).

On appeal, counsel submits documentation including a brief, evidence that the applicant made financial restitution for his crimes, and information on autism. Counsel states that one of the applicant's two children has been diagnosed with autism and requires extensive therapy and care from professionals and both parents. The record also includes affidavits from both the applicant's spouse and mother-in-law detailing the hardships that the applicant's removal would bring. A review of the documentation in the record, when considered in its totality, establishes that the applicant's family would suffer emotional and financial hardship if the applicant is not allowed to remain in the United States.

The grant or denial of the above waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Attorney General and pursuant to such terms, conditions, and procedures as he may by regulations prescribe.

The unfavorable aspects of this matter, including the seriousness of the applicant's violations, have been reviewed and considered. The unfavorable factors heavily outweigh the positive factors of the prospective hardship of separation to the applicant's spouse and children. The strong negative factors have not been overcome on appeal. Therefore, a favorable exercise of the Attorney General's discretion is not warranted in this matter at the present time.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h), the burden of establishing that the application merits approval remains entirely with the applicant. Matter of Ngai, supra. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.